

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN GARCIA,

Plaintiff,

-against-

COLLEGE OF STATEN ISLAND,  
CITY UNIVERSITY OF NEW YORK,

Defendant. X  
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**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

11-CV-2252(KAM)(CLB)

**MATSUMOTO, United States District Judge:**

On May 10, 2011, plaintiff John Garcia ("Garcia"), proceeding *pro se*, commenced this employment discrimination action against defendant College of Staten Island, City University of New York ("defendant"), pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, et seq. (ECF No. 1.) Defendant moved to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), plaintiff filed a response, and defendant subsequently replied. (ECF Nos. 13-18.) Presently before the court is a Report and Recommendation issued by Magistrate Lois Bloom on July 31, 2012, recommending that the court grant in part and deny in part defendant's motion to dismiss. (ECF No. 21, Report and Recommendation dated 7/31/2012 ("R&R"), at 21.)

As explicitly noted at the end of the Report and

Recommendation, any objections to the Report and Recommendation were to be filed within 14 days of service of the Report and Recommendation. (R&R at 22.) The Clerk of Court served the Report and Recommendation on the *pro se* plaintiff by mail on July 31, 2012. (See docket entry dated 7/31/12.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Bloom's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a careful review of the Report and Recommendation and the record in this case, and considering that neither party has objected to any of Magistrate Judge Bloom's thorough and well-reasoned recommendations, the court finds no clear error in the Report and Recommendation and hereby affirms and adopts it as the opinion of the court.

Accordingly, the court orders that defendant's motion

to dismiss should be granted in part and denied in part, as follows: (1) plaintiff's hostile work environment/sexual harassment claims are dismissed except for the claim based on allegations of harassment by Officer Robertson; (2) plaintiff's retaliation claims are dismissed except those based on Officer Robertson's harassment, Officer Mallon's promotion, and Officer Clark's misconduct regarding Officer Leung; and (3) defendant's motion to dismiss the 2007 failure-to-promote claim is denied as moot. The remainder of plaintiff's claims will proceed.

#### **CONCLUSION**

Defendant's motion to dismiss is granted in part and denied in part, as follows: (1) plaintiff's hostile work environment/sexual harassment claim is dismissed except for the claim based on allegations of harassment by Officer Robertson; (2) plaintiff's retaliation claims are dismissed except those based on plaintiff's complaint of Robertson's harassment, Mallon's promotion, and Clark's misconduct regarding Leung; (3) defendant's motion to dismiss the 2007 failure-to-promote claim is denied as moot. The remainder of plaintiff's claims will proceed.

The parties are directed to meet and confer and contact Magistrate Judge Bloom in the near future regarding setting a schedule for discovery to proceed. Additionally, the

parties are ordered to submit a joint status letter to the court on or before October 3, 2012. Defendant shall serve a copy of this Memorandum and Order upon plaintiff and file a certificate of service via ECF by September 12, 2012.

**SO ORDERED.**

Dated: September 10, 2012  
Brooklyn, New York

          /s/                      
Kiyo A. Matsumoto  
United States District Judge  
Eastern District of New York